

EAGLE BASIN PARTNERSHIP

IBLA 83-558

Decided October 17, 1983

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease application W 83267.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Rentals

When, in a drawing of simultaneously filed oil and gas lease applications, the first-drawn offeror is notified that he/she is to submit the first year's advance rental and executed lease agreements, those submissions must be received by the proper office within the prescribed 30 days. Automatic disqualification, stemming from untimely filings, will not be avoided by reliance on the assurance of the Postal Service that mailings entrusted to it would be delivered on the due date.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: First-Qualified Applicant -- Oil and Gas Leases: Rentals

The 1980 amendment of 43 CFR 3112.4-1 did not create an ambiguity which excused an applicant from filing the necessary lease offer documents within 30 days from the date of receipt. The reasons for the 1980 amendments stated by the Secretary in the Federal Register at the time of proposal and final printing amplify the stated intent of the regulations to provide that the sanction for failure to file within the 30-day period is the rejection of an applicant's offer.

APPEARANCES: Jason R. Warran, Esq., Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Eagle Basin Partnership appeals from a decision dated March 15, 1983, by the Wyoming State Office, Bureau of Land Management (BLM), rejecting oil and gas lease offer W 83267, for failure to make timely submittal of the first year's advance rental payment and executed lease offer forms.

By decision dated February 7, 1983, BLM notified appellant that appellant's oil and gas lease application for parcel WY-618 had been selected with first priority in the September 1982 simultaneous filing selection. Appellant was instructed: "All copies of the executed lease offer, all copies of the executed stipulations, the first year's rental in the amount shown above and the duplicate copy of this letter, must be returned to this office within 30 days from the date of your receipt of this decision." (Emphasis in original.) Appellant received these instructions on February 9, 1983. Therefore, the rental payment and the lease offer forms should have been filed with BLM on or before March 11, 1983, but were not in fact received by BLM until March 14.

Appellant states on appeal that its materials were mailed via express mail from California on Wednesday, March 9, and initially received by the Denver, Colorado, office of the Postal Service at 3 p.m. on March 10. At that time a postal supervisor placed appellant's mailing in the outgoing mail to Cheyenne, Wyoming. Appended to appellant's statement of reasons is the following statement of the Denver postal supervisor: "Our, meaning the USPS, committment [*sic*] says that anything mailed before 1700 will be delivered in Cheyenne the next day." Appellant contends that under the circumstances the regulations do not require rejection of its offer and that equity and justice require waiver of the 30-day period.

[1] The requirements of 43 CFR 3112.4-1(a) are clear: "The executed lease agreement and the applicant's rental payment shall be filed in the proper Bureau of Land Management office within 30 days from the date of receipt of the notice." Section 3112.6-1(d) states: "The application of the first qualified applicant shall be rejected if an offer is not filed in accordance with § 3112.4-1 * * *." ^{1/}

While the circumstances leading to the appellant's rejection are unfortunate, the regulations found at 43 CFR 3112.4-1 do not permit the consideration of excuses for failure to timely remit payment and the offer forms. Nininger v. Morton, Civ. No. 74-1246 (D.D.C. Mar. 25, 1975), *aff'g* the Board's decision in Robert D. Nininger, 16 IBLA 200 (1974); *see also* Dawson v. Andrus, 612 F.2d 1280 (10th Cir. 1980).

The Board has consistently held that it is the responsibility of the applicant to see that filings are made in a timely manner. Failure to meet the deadline because of Postal Service error does not excuse appellant's non-compliance with the BLM regulations. One choosing the means of a document's delivery must accept responsibility for and bear the consequences of delay or nondelivery resulting from the method chosen. *See* Mary Jane Associates, 74 IBLA 43 (1983); Elmer F. Brewster, 63 IBLA 51 (1982).

^{1/} Regulations cited in this decision are those in effect at the time of rejection. The regulations covering oil and gas leasing on Federal lands were revised effective Aug. 22, 1983. The provisions of 43 CFR 3112.4-1(a) and 43 CFR 3112.6-1(d) are now stated at 43 CFR 3112.6-1(a) and 43 CFR 3112.5-1(c), respectively. 48 FR 33648, 33679-80 (July 22, 1983).

[2] Appellant argues that because the applicable regulations were amended in 1980 by deleting the language of automatic disqualification from 43 CFR 3112.4-1 and providing for rejection in section 3112.6-1(d) "if an offer is not filed in accordance with § 3112.4-1" the latter regulation is now ambiguous and the Board should overrule decisions such as Jerry W. Wolf, 70 IBLA 131 (1983), because they have not addressed the consequences of the 1980 amendments. Appellant is mistaken both about the effect of the 1980 amendments and about the Wolf decision.

The amendments proposed in September 1979 were principally aimed at correcting perceived abuses of the simultaneous oil and gas leasing system by filing services. 44 FR 56176 (Sept. 28, 1979). One of the changes was to replace the drawing entry card with the lease form as the offer. In addition, in order to alleviate difficulties applicants were experiencing in submitting the first year's rental within the applicable time limit, the period was extended from 15 to 30 days. 44 FR 56177. This requirement was contained in section 3112.4-2 of the proposed regulations, which provided in part: "The executed lease form and the applicant's rental payment shall be received in the proper Bureau of Land Management office within 30 days from the date of receipt of notice or the applicant's filing shall be rejected." 44 FR 56180. The underlined language replaced the sentence from the previous version of this requirement (43 CFR 3112.4-1 (1979)) that read: "The drawee failing to submit the rental payment within the time allowed will be automatically disqualified to receive the lease * * *." In addition, the September 1979 proposal added 43 CFR 3112.6, entitled Adjudication, covering rejections and cancellations.

When the September 1979 proposed regulations were made final in May 1980 the following comment accompanied revisions to 43 CFR 3112.6:

The provisions covering rejection of applications, rejection of lease offers and cancellation of leases have been separated into three sections in the final rulemaking, rather than two as in the proposed rulemaking, to avoid confusion. Further, the language of the sections has been modified for clarity and to provide a better statement of the scope of prohibited activities.

45 FR 35160 (May 23, 1980). One of the clarifications was the addition of language mandating rejection of an offer if it did not comply with the revised requirements of 43 CFR 3112.4-1. 43 CFR 3112.6-1(d) provided: "Failure to file an offer. The application of the first qualified applicant shall be rejected if an offer is not filed in accordance with § 3112.4-1 of this title." The requirement for receipt of the first year's rental within 30 days contained in 43 CFR 3112.4-2 of the proposed regulations was placed in section 3112.4-1(a) of the final regulations and reworded to state: "The executed lease agreement and applicant's [first year] rental payment shall be filed in the proper Bureau of Land Management office within 30 days from the date of receipt of notice." 45 FR 35164. It is one of several requirements of 43 CFR 3112.4-1.

We cannot find any ambiguity as a result of these changes. The required period of time is 30 days. The sanction is rejection of an applicant's offer. The sanction applies if the offer is not filed "in accordance with" the required period of time.

The Board's decision in Wolf, supra, has addressed the consequences of those changes. The decision recited the substance of sections 3112.4-1 and 3112.6-1(d), stated that BLM had no discretion to accept late filings because the rights of second- and third-qualified applicants have intervened, and held that the decision of the Wyoming State Office of BLM was affirmed.

To forestall any recurrence of confusion it should be noted that the 1983 amendments of these two regulations, referred to in note 1, infra, create no ambiguity and the decision of the Board in this case has specifically addressed their consequences.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Will A. Irwin
Administrative Judge

